

THOMAS WORTHINGTON—EXECUTORS OF.

[To accompany Bill No. 256.]

JANUARY 13, 1832.

Reprinted by order of the House Representatives.

MR. FOSTER, from the Committee on the Judiciary, made the following
REPORT:

The Committee on the Judiciary, to whom was referred the petition of Eleanor Worthington, executrix, and James T. Worthington, executor, of Thomas Worthington, deceased, report:

That the said petition was presented to Congress at its last session, and reports favorable thereto were made both in the Senate and House of Representatives. Your committee having re-examined the report made to this House, and concurring in the views therein expressed, beg leave to adopt it as a part of this report; and herewith report a bill granting the relief sought.

JANUARY 5, 1831.

The Committee on the Judiciary, to whom was referred the petition of Eleanor Worthington, executrix, and James T. Worthington, executor, of Thomas Worthington, deceased, beg leave to report:

That, from the papers submitted to your committee, it appears that, in the year 1800, one Samuel Finley was appointed Receiver of Public Moneys at Chillicothe, in the then Northwestern Territory, now State of Ohio; and that the said Thomas Worthington, and two other persons, were the sureties of said Finley to the Government. In the year 1819, on closing the account of Mr. Finley at the Treasury, there was a balance ascertained to be due by him of \$22,278 74, for which suit was instituted, and judgment confessed. Previous to this confession of judgment, however, Mr. Worthington, at the instance of Mr. Finley, wrote to the Secretary of the Treasury, asking indulgence, by his (Finley's) securing the amount due. In his letter to the Treasury Department, dated June 16th, 1819, Mr. Worthington says, "I would only ask that his (Finley's) account should be immediately closed, and that the balance against him be fully secured, and time given to sell the property to the best advantage." He, in the same letter, tenders to the Government his services in making the proposed arrangements. Accordingly, in September thereafter, the Comptroller of the Treasury, under the direction of the Secretary, instructed Gov. Worthington to take a

deed of trust from Mr. Finley, and requested him to act as trustee. This letter was received by Gov. Worthington while the United States district court was in session. For the purpose of having the necessary deeds made out and executed with the greater correctness, and without delay, he immediately applied to the United States' District Attorney, and submitted the instructions received. The Attorney advised that, instead of executing a deed of trust, there should be a confession of judgment, with stay of execution for one year. This course was agreed to by Mr. Finley, and the judgment confessed. At that time Mr. Finley was possessed of property to a much larger amount than the debt owing to the United States; and there is little doubt that the debt would have been secured, if the course advised by Gov. Worthington, and directed by the Treasury Department, had been pursued; but, before the termination of the year for which the stay of execution had been granted, other creditors of Mr. Finley had prevailed on him to convey his property so as to secure them. In addition to this, it was discovered that Finley's title to the property held by him when he confessed the judgment was only of an equitable character, and, therefore, by the decisions which had obtained in Ohio, not subject to levy. Nevertheless, Gov. Worthington urged the Government to pursue this property by bills in chancery, confident that it might be subjected to the judgment obtained by the Government; and orders were issued by the Treasury Department to the District Attorney to pursue this course, but, from some cause, these orders were not obeyed.

It further appears, that, about the time these orders were given, the District Attorney of Ohio, was instructed by the Agent of the Treasury to commence suit against Gov. Worthington, as one of the sureties of Gen. Finley. These instructions were given in the year 1822, in consequence of information communicated to the Treasury Department by the District Attorney, that Gov. Worthington intended to defend himself against his liability on the ground that the District Attorney, as the agent of the Government, had prevented the securing of the debt due by Finley as had been directed; and that the stay of execution which had been granted by the District Attorney had enabled Finley to dispose of his property so as to defeat the operation of the judgment, unless by the aid of a court of chancery, which seems not to have been sought. The institution of the suit against Gov. Worthington occasioned a long correspondence between him and the Agent of the Treasury, in which the former repeatedly expresses the opinion that, "in equity and justice," he was exonerated from his liability to the Government, and stated his determination to defend the suit which had been brought against him. In addition to the grounds already mentioned, Gov. Worthington complained that the Government had not pursued with sufficient diligence the property belonging to the estate of one of the sureties who was dead, and contended that, if liable at all, only one half the penalty of the bond should be required of him. Distrusting, however, the validity of his defence at law, several propositions were made by Gov. Worthington to the Treasury Department, which resulted in his suffering judgment to go against him for the whole of the penalty of the bond, which was \$10,000. Not long after this judgment was had, it was discovered that there had been a misunderstanding between Gov. Worthington and the Agent of the Treasury as to the terms on which the judgment was permitted to be taken without resistance—Gov. Worthington insisting that the Government had failed to comply with the conditions on which he withdrew his defence to the

suit. It is true that, after the obtainment of the judgment, Gov. Worthington seemed to regard relief from it as hopeless; yet, in all his future correspondence with the department, which continued up to the time of his death, and in which he frequently asked indulgence, he constantly repeated the opinion that, in strict justice, he ought to be discharged from all liability to the Government. His representatives, acting under the same opinion, alleging that the judgment ought never to have been rendered, and insisting that a judgment, thus obtained, should not be enforced by the Government, petition Congress for relief.

The committee, after a careful examination of all the facts, are of opinion that the petitioners are strongly supported in this application from several considerations. The indulgence of the Government for *nineteen years* to an officer holding public moneys (although it might not legally amount to a release of his sureties) may well be pleaded in an application like the present, especially when, by this indulgence, the sole liability is cast upon one of the sureties, whereas, if there had been ordinary diligence used, (even if there had been a defalcation on the part of the principal) the liability would have been shared by two others. But the committee believe that, notwithstanding this extraordinary indulgence, if the course advised by Gov. Worthington, and directed by the Treasury Department, had been pursued, the debt due the Government would have been long since paid from the property of the principal. That this course was not pursued, arose from the advice of the District Attorney, the agent of the Government. The committee are far from attributing blame to the Attorney: they entertain no doubt that he advised and acted as he believed most for the interest of the Government; but when the result must be injury to the Government or to Gov. Worthington, our sense of justice (without reference to legal principles) dictates that the loss should fall on the Government. The committee are strongly inclined to the opinion that, had this defence been sent up by Gov. Worthington to the action brought against him, it would have been sustained; and although judgment has been obtained, it was without opposition from Gov. Worthington, and on certain conditions, which, as he understood them, have not been complied with by the Government. True, the Agent of the Treasury is at issue with him as to the conditions agreed on; but, admitting Gov. Worthington to have been mistaken, he certainly ought not to be bound by any other conditions than those to which he assented; and the Government certainly should not avail itself of an advantage obtained over an individual from a misunderstanding, either on his part or that of its agent.

From these considerations, and from a full view of all the circumstances connected with this case, the committee are of opinion that the petitioners are, in justice and equity, entitled to the relief sought; and they, therefore, report a bill for that purpose.

